

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3423 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

NARENDRAI NANUBHAI THAKER

Versus

TDO & ORS

Appearance:

MR BG JANI for Petitioner
MR HS MUNSHAW for Respondent No. 1
SERVED for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE C.K.THAKKER

Date of decision: 07/02/96

ORAL JUDGEMENT

This petition is filed by the petitioner for quashing and setting aside an order dated October 29, 1994. Annexure.J to the petition , in which it was stated that the petitioner's services were treated as

terminated with effect from July 7, 1982 since he had remained absent. As he did not remain present from that date and voluntarily left the employment, he was not entitled to any pensionary benefits. The said action, according to the petitioner, is unlawful, invalid, violative of his fundamental rights guaranteed under the Constitution of India and requires to be interfered with by this Court.

2. It is the case of the petitioner that he was appointed as an Assistant Teacher in Bagasara Primary School in 1962. Upto July 6, 1982, he was continued in service, but thereafter, he fell sick on 7th of July, 1982 and, hence, he could not resume duty. On April 15, 1988, he made an application to the respondents to permit him to retire and to grant invalid pension on account of his inability to serve with the respondent-school. In the said application, he had mentioned that he was prepared to produce necessary documents and/or certificates so that his case could be considered in accordance with law. Since the respondent did not reply to the application of the petitioner, he again made an application on December 2, 1988 and requested the authorities to grant invalid pension. It was stated that, alongwith the application, he was submitting a certificate issued by a Doctor. Copy of the said certificate dt. November 21, 1988 is also annexed at Annexure.B (collectively) to the petition. In the said certificate, it was mentioned that the petitioner had come to the hospital as an outdoor patient on October 19, 1988, was under treatment and was physically unable to perform his duties. Looking to the above certificate, it is not clear as to since how much period the petitioner was sick. On the contrary, it clearly appears that the petitioner had gone to the hospital on the same day as an outdoor patient. It is asserted by the petitioner that in spite of the application and medical certificate, no decision was taken. Hence, once again, the petitioner wrote to the authorities on February 3, 1991 that he wanted to go for invalid pension with effect from July 7, 1982. A certificate was also sent earlier. Even alongwith that application, a copy was submitted. In reply to the said application, a communication was sent to him by the District Primary Education Officer ("DPEO", for short) that he had not submitted certificate in accordance with the provisions of Rule 201 of the Bombay Civil Services Rules, 1959 (hereinafter referred to as "The Rules") and further proceedings could be taken in his case only after certificate would be sent in accordance with Rule 201. Again, petitioner wrote a letter to Taluka Development Officer on May 10, 1991 to grant him pensionary benefits

by permitting him to retire with effect from July 7, 1982. On July 8, 1991, DPEO has issued an office order, in which it was stated that the petitioner had made an application, by which a prayer was made to grant him pensionary benefits on the basis of the certificate issued and the said application was required to be granted and accordingly, he was allowed to go for invalid pension with effect from 7th July, 1982. Looking to the impugned order, however, it is clear that on two grounds, the prayer of the petitioner was not granted namely; (i) the petitioner had not submitted certificate in accordance with the provisions of Rule 201 of the Rules; and (ii) the petitioner had remained absent from duty from 7th of July, 1982 and for the first time, a certificate was produced on September 24, 1993. Thus, the petitioner had remained unauthorisedly absent from July 7, 1982 to September 93, and in these circumstances, he was treated as having voluntarily left the service with effect from 7th of July 1982. He was, therefore, not entitled to pensionary benefits. It is this order, which is challenged by the petitioner in this petition.

Notice was issued by this Court (Coram: M.S.Parikh J.) on May 2, 1995 and was made returnable on July 11, 1995. On 29th of August, 1995, the matter was admitted because in spite of service to the respondents, nobody appeared. To day, the matter is called out for hearing.

Mr.B.G.Jani, learned counsel for the petitioner, contended that the petitioner is entitled to benefits on the basis of invalid pension. He submitted that for the said purpose, necessary certificate, as required under Rule 201 of the Rules, had already been produced in the year 1988 and thereafter there was no earthly reason on the part of the respondent-authorities not to accept the said certificate and not to grant benefits, to which he was otherwise entitled. He further submitted that when such certificate was issued in 1988 and the order was passed by DPEO, no action could have been taken holding the petitioner as not entitled to such benefits. Finally, he submitted that in any case, the petitioner had completed service of about 20 years and even on the ground of justice, equity and good conscience, an appropriate direction may be issued to the respondent-authorities to grant pensionary benefits to the petitioner. Mr. Bhambhanian, Addl. Govt. Pleader, on the other hand, supported the action taken by the authorities.

In the facts and circumstances, in my opinion,

petition filed by the petitioner cannot be allowed. An affidavit-in-reply is filed by the District Primary Education Officer, Amreli. In the counter, it was, inter alia, stated that the petitioner had never worked with effect from July 7, 1982. He remained absent unauthorisedly without obtaining leave or prior permission. He had also not produced any medical certificate till 1988. The petitioner was informed vide various communications, some of them have been annexed to the affidavit-in-reply that though the petitioner was serving as teacher, he was remaining absent. It was not in the interest of the children who were to be educated by the petitioner. It was also stated that the petitioner had not submitted medical certificate in accordance with the provisions of Rule 201 of the Rules. It was further stated that the petitioner was already informed that his case could be considered only after the submission of the certificate in accordance with Rule 201. It was finally stated that if the petitioner could not submit the certificate in accordance with the Rules and there would be delay regarding his pension case, the petitioner himself would be responsible for the same. According to the respondent authorities, thus, the petitioner had voluntarily left the service and did not report for duty. He also did not produce necessary certificate issued by the Civil Surgeon in accordance with Rule 201. In these circumstances, it cannot be said that the authorities have committed any error of law apparent on the face of the record by not granting him invalid pension. If the petitioner wanted the said benefit it was obligatory, on his part to follow the procedure of law and to submit the certificate as laid down under rule 201 of the Rules. Since, there was failure on the part of the petitioner, in doing so, the action of the respondent authorities cannot be held to be arbitrary, unlawful or unreasonable. The petitioner cannot, therefore, make any grievance against such an act.

In view of the facts stated and averments made in the reply-affidavit, the action of the respondent authorities in not granting benefits cannot be said to be unlawful or illegal. I do not find any substance in any of the contentions of the learned counsel of the petitioner and the order Annexure.J cannot be said to be contrary to law. The petition, therefore, requires to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, no order as to costs.

Before parting with the order, I may observe that the petitioner joined the services of the respondent in

the year 1962 and admittedly he had served upto July 1982. Thus, he has completed about 20 years of service. It is, no doubt, true that thereafter he left the service and according to the respondent-authorities, he left the employment on his own accord. Hence, the order Annexure.J dt. October 29, 1994 cannot be said to be illegal and I have dismissed the petition. But in the facts and circumstances of the case particularly when the petitioner has worked for about 20 years, it would be in the fitness of things if the respondent authorities take into account undisputed and admitted facts that the petitioner has worked with them for 20 years and to grant some benefit in the interest of justice.

With the above observations, I do not see any substance in the petition and it is dismissed. Rule discharged. No order as to costs.
